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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR ENVIRONMENTAL)
HEALTH, SIERRA CLUB, and CENTER)
FOR BIOLOGICAL DIVERSITY,)

Plaintiffs,)

v.)

MICHAEL S. REGAN,)

in his official capacity as Administrator,)
United States Environmental Protection)
Agency,)

Defendant.)

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

INTRODUCTION

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2 1. All areas of the country are legally entitled to healthy, clean air. Not all areas have it.
3 This is a Clean Air Act “deadline” suit against Michael S. Regan, in his official capacity as
4 Administrator of the United States Environmental Protection Agency (EPA), for his failure to
5 protect people, ecosystems, and wildlife from dangerous exposure to sulfur oxides (SO_x) air
6 pollution.
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8 2. SO_x, which is formed primarily from the combustion of fuel with sulfur, such as coal and
9 diesel, harms human health and the environment. Even short-term exposure to SO_x has
10 significant health impacts, including decrements in lung function, aggravation of asthma, and
11 respiratory and cardiovascular morbidity. SO_x also contributes to the formation of acid rain,
12 which damages trees, crops, historic buildings, and monuments, and alters the acidity of both
13 soils and water bodies.
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15 3. The Clean Air Act requires EPA to establish health- and welfare-protective National
16 Ambient Air Quality Standards (NAAQS) to limit the amount of SO_x in the outdoor air. Areas
17 with SO_x pollution levels that exceed the standards must clean up their air.
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19 4. To better protect the public from SO_x, the EPA promulgated a sulfur dioxide (SO₂)
20 NAAQS in 2010. In response to the 2010 NAAQS, EPA designated the following areas as
21 nonattainment, meaning that the air quality in these areas has SO₂ pollution that violates the
22 standard: Detroit, MI Wayne County (part)¹ (Detroit) and Anne Arundel County and Baltimore
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26 ¹ This is the area bounded on the east by the Michigan-Ontario border, on the south by the
27 Wayne County-Monroe County border, on the west by Interstate 75 north to Southfield Road,
28 Southfield Road to Interstate 94, and Interstate 94 north to Michigan Avenue, and on the north
by Michigan Avenue to Woodward Avenue and a line on Woodward Avenue extended to the
Michigan-Ontario border. *See* 40 C.F.R. § 81.323.

1 County, MD² (Baltimore). Nearly 1.3 million people live and work in these areas with air
2 pollution that exceeds the SO₂ NAAQS.

3 5. When a state submits a state implementation plan (SIP) to EPA which is supposed to
4 reduce pollution levels to below the NAAQS, the Clean Air Act requires that EPA review it
5 within specified time frames. Maryland submitted a SIP to EPA for the Baltimore nonattainment
6 area, but EPA has not met the deadline to review the SIP and determine whether it meets the
7 requirements of the Clean Air Act. *See* 42 U.S.C. § 7410(k)(2)-(4). If a state fails to submit a
8 required SIP by the deadline set by the Clean Air Act, EPA is required to make a finding that the
9 state failed to submit its required SIP. This finding triggers a requirement that EPA promulgate a
10 Federal Implementation Plan (FIP) within two years of the finding to filling in the gap left by the
11 state's failure to submit a SIP. EPA made a finding, effective April 18, 2016, that Michigan
12 failed to submit the required SO₂ nonattainment SIP for Detroit. However, despite that fact that
13 more than two years has passed, EPA has failed to promulgate a FIP.
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17 **JURISDICTION AND NOTICE**

18 6. This case is a Clean Air Act "citizen suit." Therefore, the Court has jurisdiction over this
19 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)
20 (Clean Air Act citizen suits).
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22 7. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. § 505 or
23 1146 of Title 11, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to
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25 _____
26 ² This is portions of Anne Arundel County that are within 26.8 kilometers of Herbert A.
27 Wagner's Unit 3 stack, which is located at 39.17765 N. latitude, 76.52752 W. longitude and
28 portions of Baltimore County that are within 26.8 kilometers of Herbert A. Wagner's Unit 3
stack, which is located at 39.17765 N. latitude, 76.52752 W. longitude. *See* 40 C.F.R. § 81.321.

1 order declaratory relief under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C.
2 § 2202 authorizes this Court to issue injunctive relief.

3 8. Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of
4 intent to sue regarding the violations alleged in this Complaint. The notice letter was postmarked
5 May 18, 2021. EPA received it no later than May 25, 2021. More than 60 days have passed
6 since Plaintiffs mailed the notice letter. EPA has not remedied the violations alleged in this
7 Complaint. Therefore, a present and actual controversy exists between the parties.
8

9 **VENUE**

10 9. Venue is proper in this Court under 28 U.S.C. § 1391(e). Plaintiff Center for
11 Environmental Health maintains its principal place of business in Oakland, California. Plaintiff
12 Sierra Club maintains its principal place of business in Oakland, California. Oakland, California
13 is in the Northern California judicial district. This is a civil action in which the defendant is an
14 officer or employee of the United States or any agency thereof acting in his official capacity or
15 under color of legal authority. No real property is involved in this action. Defendant EPA
16 resides and performs its official duties in this district.
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18 10. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or
19 Oakland Division of this Court because a substantial part of the events and omissions giving rise
20 to the claims in this case occurred in the County of San Francisco.
21

22 **PARTIES**

23 11. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a nonprofit corporation
24 organized and existing under the laws of the State of California, with its headquarters located in
25 Oakland. The Center for Environmental Health protects the public from toxic chemicals by
26 working with communities, consumers, workers, government, and the private sector to demand
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1 and support business practices that are safe for public health and the environment. The Center
2 for Environmental Health works in pursuit of a world in which all people live, work, learn, and
3 play in healthy environments.

4 12. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws
5 of the State of California, with its headquarters located in Oakland. Sierra Club is the oldest and
6 largest grassroots environmental organization in the United States, with more than 795,000
7 members nationally. Sierra Club's mission is to explore, enjoy, and protect the wild places of
8 the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems;
9 to educate and enlist humanity to protect and restore the quality of the natural and human
10 environment; and to use all lawful means to carry out these objectives. Sierra Club performs this
11 mission through advocacy, litigation, and educational outreach to its members and state chapters.
12 Sierra Club and its members are greatly concerned about the effects of air pollution on human
13 health and the environment and have a long history of involvement in activities related to air
14 quality.

15 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
16 corporation incorporated and existing under the laws of the State of California, with its main
17 California office in Oakland. The Center for Biological Diversity has approximately 74,000
18 members throughout the United States and the world. The Center for Biological Diversity's
19 mission is to ensure the preservation, protection, and restoration of biodiversity, native species,
20 ecosystems, public lands and waters, and public health through science, policy, and
21 environmental law. Based on the understanding that the health and vigor of human societies and
22 the integrity and wildness of the natural environment are closely linked, the Center for Biological
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1 Diversity is working to secure a future for animals and plants hovering on the brink of extinction,
2 for the ecosystems they need to survive, and for a healthy, livable future for all of us.

3 14. Plaintiffs' members live, work, recreate, travel, and engage in other activities throughout
4 the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the
5 affected areas threatens and damages, and will continue to threaten and damage, the health and
6 welfare of Plaintiffs' members, as well as their ability to engage in and enjoy their other
7 activities. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and
8 recreational opportunities of the affected areas.

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10 15. The acts and omissions of EPA alleged here harm Plaintiffs' members by prolonging
11 poor air quality conditions that adversely affect or threaten their health, and by nullifying or
12 delaying measures and procedures mandated by the Act to protect their health from SO_x
13 pollution in places where they live, work, travel, and recreate.

14
15 16. The acts and omissions of EPA alleged here further harm Plaintiffs' members' welfare
16 interest in using and enjoying the natural environment. Elevated levels of SO_x damage plant life,
17 aquatic life, and natural ecosystems, thus harming Plaintiffs' members' recreational and aesthetic
18 interests.

19
20 17. EPA's failure to timely perform the mandatory duties described herein also adversely
21 affects Plaintiffs, as well as their members, by depriving them of procedural protection and
22 opportunities, as well as information that they are entitled to under the Clean Air Act.

23 18. The above injuries will continue until the Court grants the relief requested herein. A
24 court order requiring EPA to promptly undertake its mandatory duties would redress Plaintiffs'
25 and Plaintiffs' members' injuries.
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1 19. Defendant MICHAEL S. REGAN is the Administrator of the EPA. Administrator Regan
2 is charged with the duty to uphold the Clean Air Act and to take required regulatory actions
3 according to the schedules established by the Act, including the mandatory duties at issue in this
4 case. Administrator Wheeler is sued in his official capacity.
5

6 **FACTUAL BACKGROUND: SULFUR DIOXIDE**

7 20. Sulfur pollution consists of sulfur oxide (SO_x) gases. Of the SO_x gases, sulfur dioxide
8 (SO₂) is the most common. *See* Sulfur Dioxide Pollution: Sulfur Dioxide Basics, EPA,
9 <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited August 5, 2020).

10 The largest source of SO₂ originates from the combustion of fossil fuels containing sulfur by
11 power plants and other industrial facilities. *Id.* SO₂ is also produced during certain industrial
12 processes, such as extracting metal from ore and in some oil refining processes, and by ships and
13 other vehicles and heavy equipment that burn fuel with a high sulfur content. *Id.*; Primary
14 NAAQS for Sulfur Dioxide, 75 Fed. Reg. 35,520, 35,524 (June 22, 2010).
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16 21. Human health can be dangerously impacted by SO_x emissions in as little as five minutes.
17 Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at 35,525. SO_x pollution contributes to
18 respiratory problems by impacting lung function and aggravating asthma, particularly for
19 children and the elderly. *Id.* at 35,525-29. SO_x emissions can also aggravate existing heart and
20 lung diseases, and cause respiratory and cardiovascular morbidity. *Id.*
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22 22. SO_x emissions also impact the environment. Acute and chronic exposures to SO_x lead to
23 foliar injury, decreased photosynthesis, and decreased vegetation growth. Secondary NAAQS
24 for Oxides of Nitrogen and Sulfur, 77 Fed. Reg. 20,218, 20,224 (Apr. 3, 2012). In addition,
25 because SO_x emissions may be transmitted long distances, they contribute to visibility
26 impairment problems in many national parks and wilderness areas. *See* Sulfur Dioxide
27 Pollution: Sulfur Dioxide Basics, EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide->
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1 [basics#effects](#) (last visited August 5, 2020). Furthermore, SO_x emissions have the potential to
2 negatively affect endangered species. *See* Secondary NAAQS for Oxides of Nitrogen and
3 Sulfur, 77 Fed. Reg. at 20,234. Finally, SO_x emissions contribute to the formation of acid rain,
4 which in turn impacts both the human and natural environment. Sulfur Dioxide Pollution: Sulfur
5 Dioxide Basics, EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last
6 visited August 5, 2020). For example, acid rain damages trees, crops, historic buildings, and
7 monuments, and alters the acidity of both soils and water bodies. Effects of Acid Rain, EPA,
8 <https://www.epa.gov/acidrain/effects-acid-rain> (last visited August 5, 2020).

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10 23. SO_x can also react with other compounds in the atmosphere to form small particles,
11 which contribute to particulate matter (PM) pollution. Secondary NAAQS for Oxides of
12 Nitrogen and Sulfur, 77 Fed. Reg. at 20,222. PM can penetrate deeply into the lungs and can
13 contribute to health problems and death. *See* Sulfur Dioxide Pollution: Sulfur Dioxide Basics,
14 EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited August 5,
15 2020). SO_x also facilitates mercury methylation, which results in a form of mercury that is
16 especially dangerous to humans and wildlife. EPA, Integrated Science Assessment for Oxides of
17 Nitrogen and Sulfur – Ecological Criteria, Executive Summary at 12 (2008), *available at*
18 <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=201485>.

21 STATUTORY AND REGULATORY BACKGROUND

22 24. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s
23 air resources so as to promote the public health and welfare and the productive capacity of its
24 population.” 42 U.S.C. § 7401(b)(1). In so enacting, Congress wanted to “**speed up**, expand,
25 and intensify the war against air pollution in the United States with a view to assuring that the air
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1 we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong.,
2 2d Sess. 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356 (emphasis added).

3 25. Central to the Act is the requirement that EPA establish national ambient air quality
4 standards (NAAQS) for certain widespread air pollutants that endanger public health and
5 welfare, referred to as “criteria pollutants.” 42 U.S.C. §§ 7408-7409. One criteria pollutant is
6 sulfur dioxide. *See* 40 C.F.R. §§ 50.4, 50.5, 50.17.

8 26. The NAAQS establish allowable concentrations of criteria pollutants in ambient air, *i.e.*,
9 outdoor air. Primary standards must be stringent enough to protect public health with an
10 adequate margin of safety. 42 U.S.C. § 7409(b)(1). Secondary standards must be stringent
11 enough to protect public welfare, including, but not limited to, effects on soils, water, vegetation,
12 manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property, economic
13 impacts, and effects on personal comfort and well-being. *Id.* §§ 7409(b)(2), 7602(h).

15 27. After EPA sets or revises a standard, the Clean Air Act requires EPA to take steps to
16 implement the standard. Within two years of revising a standard, EPA must “designate” areas as
17 not meeting the standard, known as “nonattainment,” or meeting the standard, known as
18 “attainment.” 42 U.S.C. § 7407(d)(1)(A)-(B).

20 28. For each area designated nonattainment, states must develop a plan to attain the NAAQS.
21 These plans, which must be submitted to EPA, are called State Implementation Plans (SIPs). *See*
22 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a, 7514 – 7514a. SIPs to attain the NAAQS in areas
23 designated as nonattainment are known as nonattainment SIPs. These nonattainment SIPs
24 include various elements.

26 29. EPA is required to determine whether a SIP submittal is administratively complete. 42
27 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has not complied by
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1 providing the required SIP submittal, there is no submittal that can be deemed administratively
2 complete, and EPA must make a determination stating that the state failed to submit the required
3 state implementation plan. *Id.* This determination is referred to as a “finding of failure to
4 submit.”

5
6 30. A finding of failure to submit is critical because it triggers a two-year clock for EPA to
7 step into the void left by the state’s failure to submit a SIP by promulgating a federal
8 implementation plan (FIP) to reduce SO_x levels to below the NAAQS. 42 U.S.C. § 7410(c).

9 31. If a state does submit a SIP submittal, EPA must determine if the submittal is
10 administratively complete. EPA has a mandatory duty to approve or disapprove administratively
11 complete SIP submittals within 12 months of finding the submittal administratively complete.
12 42 U.S.C. § 7410(k)(2) – (4).

14 **FACTUAL BACKGROUND**

15 32. SO₂ is the pollutant that EPA has used as a surrogate parameter for regulation of all SO_x
16 emissions since first promulgating a NAAQS for SO₂ in 1971. *See* Nat’l Primary and Secondary
17 Ambient Air Quality Standards, 36 Fed. Reg. 8,186 (Apr. 30, 1971). Effective August 23, 2010,
18 EPA revised the primary SO₂ NAAQS. Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at
19 35,520. EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks **a year**
20 will be prevented by the 2010 SO₂ NAAQS. EPA, Final Regulatory Impact Analysis for the SO₂
21 NAAQS, at 5-35 (2010), *available at* [https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-](https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2_ria_final_2010-06.pdf)
22 [so2_ria_final_2010-06.pdf](https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2_ria_final_2010-06.pdf). However, these lives can only be saved and adverse health avoided
23 if EPA actually implements the 2010 SO₂ NAAQS.
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1 **CLAIM ONE**

2 **(Failure to Approve or Disapprove Nonattainment SIP Submittal for Baltimore)**

3 33. Plaintiffs incorporate by reference all paragraphs listed above.

4 34. Maryland submitted a state implementation plan (SIP) to EPA for the Baltimore SO₂
5 nonattainment area on February 3, 2020 which included the following elements: Attainment
6 Demonstration, Contingency Measures, Emissions Inventory, Nonattainment New Source
7 Review, Reasonably available control measures/Reasonably available control technology
8 (RACM/RACT), Reasonable Further Progress (RFP).

9 35. On March 18, 2020, EPA found Maryland's SIP submittal administratively complete.

10 36. As a result, EPA has a mandatory duty to approve or disapprove, either in full or in part,
11 Maryland's above listed elements of the SIP submittal for Baltimore by March 18, 2021. *See* 42
12 U.S.C. § 7410(k)(2)-(4).

13 37. It has been more than 12 months since EPA found the above referenced SIP submittal for
14 Baltimore administratively complete. Yet, EPA has not approved or disapproved, either in full
15 or in part, the above referenced SIP submittal.

16 38. Therefore, EPA is in violation of its mandatory duty to approve or disapprove, either in
17 full or in part, Maryland's above listed elements of the SIP submittal for Baltimore.
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21 **CLAIM TWO**

22 **(Failure to promulgate a FIP for Detroit)**

23 39. Plaintiffs incorporate by reference all paragraphs listed above.

24 40. On March 18, 2016, effective April 18, 2016, EPA published an action finding that
25 Michigan had failed to submit the required SO₂ nonattainment SIP for the Detroit nonattainment
26 area by the submittal deadline. *See* 81 Fed. Reg. 14,736, 14,738 (Mar. 18, 2016).
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1 41. This finding triggered a requirement that EPA promulgate a Federal Implementation Plan
2 (FIP) within two years of the finding unless, before promulgating the FIP (a) the state had made
3 the necessary complete submittal and (b) EPA had approved the submittal as meeting applicable
4 requirements. *See* 42 U.S.C. § 7410(c)(1).

5
6 42. As a result, EPA has a mandatory duty to promulgate a FIP for the Detroit SO₂
7 nonattainment area by no later than April 18, 2018 for the Attainment Demonstration,
8 Contingency Measures, RACM/RACT, and RFP elements.

9 43. It is after April 18, 2018.

10 44. EPA has not approved a SIP submittal for the above referenced elements for the Detroit
11 SO₂ nonattainment area.

12 45. EPA has not promulgated a FIP for the above referenced elements for the Detroit SO₂
13 nonattainment area.

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15 46. Therefore, EPA is in violation of its mandatory duty to promulgate a FIP for the above
16 referenced elements for the Detroit SO₂ nonattainment area.

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19 **RELIEF REQUESTED**

20 Plaintiffs respectfully request that the Court:

21 (A) Declare that the Administrator is in violation of the Clean Air Act with regard to his
22 failure to perform each mandatory duty listed above;

23 (B) Issue a mandatory injunction requiring the Administrator to perform his mandatory duties
24 by certain dates;

25 (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's
26 order;
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1 (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees;
2 and

3 (E) Grant such further relief as the Court deems just and proper.
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5 Respectfully Submitted,

6 /s/ Jonathan Evans

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15 Health, Sierra Club, and Center for Biological
16 Diversity,

17 DATED: August 11, 2021
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